1953 K **File No.** Est II. Pen | 53
Pt II

Legal Dept

C. BRANCH

Subject:— Correspondence relating to Pensions of Legal Department

Establishment

P-250
E

File No. Est II . Pen | 53
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Gen. 194 o.

165-C

Legal Department,
Secretariat,
Bombay 28th December 1951.

To

The Secretary to the Government of Bombay,
Legal Department.

Subject:- Revised Pension Rules.
Option under --

Sir,

With reference to the orders contained in Government Resolutions, Finance Department, No. 8315/33, dated the 20th December 1950 and the 26th March 1951, I, the undersigned, Shri Dattatraya Laxman Bidaye hereby communicate to you that I elect to be governed by option (c) in paragraph 1 of the Government Resolution, Finance Department, No. 8315/33, dated the 26th March 1951.

2. The necessary nomination forms 'B' and 'E' will be filled in and sent later.

3. Please acknowledge the receipt.

Yours faithfully,

Sd/- D.L. Bidaye.

SSM / 27/7/56.

No. 13749
Legal Department,
Bombay Castle (Bombay No. 1), 22nd August 1952.

Subject:- Pension to the Widow of late D.L. Bidaye.

MEMORANDUM.

With reference to her application dated the 6th August 1952 on the above subject. Shrimati Sushila Dattatraya Bidaye is informed that necessary immediate steps are being taken to submit the pension papers of the late D.L. Bidaye to the Accountant General, Bombay. She is therefore requested to submit an application in form 'F' (enclosed) duly filled in. On receipt of the same the question regarding the admissiblity or otherwise of family pension will be communicated to her.

Assistant Secretary to the
Government of Bombay, Legal Department

To

~~Shrimati Bach~~

SSM /27/7/56.

Accompaniment to Government Circular, Finance Department, No. 8315/33, dated the 9th November 1951.

Form "F"

Application for a family pension for the family of Shri Dattatraya Laxman Bidaye Late a Cashier, in the Legal Department of Secfetariate, Bombay.

1.	Name of the applicant.	Sushilabai.	
2.	Relationship to the deceased Government servant/pensioner.	Wife.	
3.	Date of retirament if the deceased was a pensioner.	2nd August 1952.	
4.	Date of death of the Government servant/pensioner.	6th May 1954 ~~2nd August 1952.~~	
5.	The Order in which the applicant's name appears in the nomination form "E".		
6.	Names and ages of surviving Kindred of the deceased -	Name	date of birth (by Christain era).
	(a) Widow	Sushilabai	24-8-191
	Sons	1. Gajanan	19-8-1932
		2. Laxman	7-10-1934
		3. Shashikumar	2-9-40940
		4. Anilkumar.	10- 8-1942
	Unmarried Daughters	1. Malini.	4-12-1936
		2. Shalini.	18- 8-1942
		3. Nalini.	26-11-1944
		4. Kamalini.	14-7-1949
		5. Baby.	23- 7-1952
	Widowed Daughters	------	
	(b) Father	------	
	Mother	Rukmanibai	26- 3-1864
	Brothers ...	-------	
	Unmarried Sisters.	-------	
	Widowed Sisters		
7.	Name of Treasury/Sub-Treasury at which payment is desired.	Bombay	
8.	Desriptive roll of Widow of late	Sushilabai Shri. D.L. Bidaye.	
	(i) Date of birht (by Christain era)		24- 8-1911

5 Continued.

(ii) Height 4 ft. & 8¾ inches.

(iii) Personal marks, if any, on the hand, face, etc. — Too tatoo marks. (One on forehead and the another on the chin.).

(iv) Signature of left hand thumb and finger impressions -

Small finger.	Ring finger.	middle finger.	Index finger.	Thumb

9. Full adress of the applicant. — "Colah House," opp. Central Studios. 77- Tardeo Road. Bombay 7.

Attested by

1.

2.

Witnesses.

1.

2.

Note1. - The descriptive roll and signature/thumb and finger impressions accompanying application for family pension should be in duplicate and attested by two or more persons of respectability in the town, village or pargana in which the applicant resides.

Note2. - If the applicant belongs to a category mentioned in item 6(b) he should furnish proff of his dependence on the deceased Government servant/pensioner for support.

Note3. - If the applicant is a minor brother of the Government servant/pensioner, the statement against item 8(1) should be supported by a certificate of age (in original with two attested copies) showing the date of birth of the applicant. The original will be returned to the applicant after the necessary verification.

Statement showing 3 yearss average of the pensionable pay of Late D.L. Bidaye.

Period.	Pay drawn.	Special pay.
3-7-1949 to 31-7-1949 @ Rs. 225/-	210-8-0	
August 1949	225-0-0	
September 1949	225-0-0	
October 1949	225-0-0	
November 1949	215-13-0	
December 1949	209- 3-0	
January 1950	210- 5-0	
February 1950	225-0-0	
March 1950	225- 0-0	
April 1950	225- 0-0	
May 1950	225- 0-0	
June 1950	225- 0-0	
July 1950	225- 0-0	
August 1950	225- 0-0	
September 1950	196- 0-0	
October 1950	196- 0-0	
November 1950	213- 7-0	
December 1950	216-11-0	
January 1951	216-11-0	
February 1951	216-11-0	
March 1951	216-11-0	
April 1951	216-11-0	
May 1951	216-11-0	
June 1951	216-11-0	
July 1951	206- 1-0	41-15-0
August 1952	204- 0-0	50- 0-0
September 1951	204- 0-0	50- 0-0
October 1951	204- 0-0	50- 0-0
November 1951	204- 0-0	50- 0-0
December 1951	204- 0-0	50- 0-0
January 1952	204- 0-0	50- 0-0
February 1952	207- 6-0	50--00

Period.	Paydrawn.	Special pay.
April 1952	212- 0-0	50-0-0
May 1952	212- 0-0	50-0-0
June 1952	212- 0-0	50-0-0
July 1952	212- 0-0	50-0-0
August (1st to 2nd) 1952.	13-11-0	3-3-0
	7024- 3-0	645-2-0
	8369- 5-0	---36 = 238
	½ pension	119.

Gratuity

(i) $\frac{212}{50}$ X 12 = 3144.

(ii) Gratuity. $\frac{9}{20}$ X $\frac{262}{1}$ X $\frac{25}{1}$ = Rs. 2947

For the gratuity of Rs. 2947 pension equivalent with the (age next birth day is 44 and hence Commutation value expressed as years of purchase is 16.07). (Vide Appx. XIV of B.C.S. Rules Vol. II). Therefore,

$\frac{2947}{1}$ X $\frac{16.07}{x12}$ = $\frac{192.84}{}$

		Rs.	As.
294700	(	15 -	5
19284			
107860			
96420			
11440			
11440			
16			
192184) 183040	(	4	
176136			
9904.			

Hence total pension = 119- 0

Reduction of pension equivalent of gratuity of Rs. 2947 admissible 15- 5

103-11 Rs. 103-11-0

SSM / 27/7/56.

Legal Department.

Submitted.

This relates to the grant of family pension to the widow of late D.L.Bidaye, Ex-cashier in this Department, who died a sudden death after a brief illness on 2nd August 1952.

2. From the history of service prepared it appears that the late Bidaye first joined P.W.D. Secretariat service on 8th June 1925. From this date to 5th April 1937 the date on which his services were transferred to L.D., he had put in services in the P.W.D. as under:-

P.W.D.Service.

Temporary.			Officiating.			Break in service		
Y.	M.	D.	Y.	M.	D.	Y.	M.	D.
0	0	20	0	5	13	0	2	24
2	7	13	7	5	3	0	1	2
		Total						
(½ = 1	4	1)	8	14	17	0	3	26

L.D. Service 16 Yrs. 1M. 3 d. Substantive & permanent.

Thus the total service both in P.W.D. and L.D. comes to 25 years 3 months and 20 days which is a qualifying service under rule 5(1) of the Revised Pension Rules had it been continuous. Unfortunately he had two small breaks which work out to 3 months and 26 days. If these two breaks in service are condoned his family will become entitled to a family pension

3. The late D.L.Bidaye was one of the three, namely, Shri G.D.Ranade and Shri R.V.Velankar who were transferred to this Department from the P.W.D. on 5-4-1937. Their services were also temporary and officiating in the Public Works Department. In the case of Shri R.V.

R.V.Velankar there was a long break in service to the extent of 1 year and 9 days ((i) 1 yr. 5 days and (ii) 9 days). This was condoned by Government (vide G.M.L.D. No. 4602 dated 13-5-1948). As against this the breaks in service in the case of late D.L. Bidaye are only for a short period of 3 months and 26days. Both Shri Ranade and Velankar are enjoying pension till today.

4. From the statement of pensionable pay prepared it can be seen that had Shri Bidaye been alive he would have become entitled to a pension of Rs. 119 less commuted value of Rs. 15-5-0 i.e. Rs. 103-11-0. In the event of death of Government servant the commutation value is not taken into account and therefore the family will be entitled to ½ the pension. In this case the family pension works out to Rs. 119 ½ = Rs. 59-8-0.

5. The widow of late D.L.Bidaye Shrimati Sushilabai who was asked to submit an application in form F has forwarded the same requesting for the grant of family pension. The form is in order.

6. The late D.L.Bidaye had elected to be governed by option C in para 1 of G.R.F.D. No. 8315/33 dated 23-6-51. He died while in service. At the time of his death he completed 25 years qualifying service (which includes the leave period as per rule 6(2) of the Revised Pension Rules), but excludes the periods of breaks of 3 months and 26 days. If the periods of breaks in service are condoned the widow would become entitled to gratuity aggragating to Rs. 3144-0-0 plus a monthly pension of Rs. 59-8-0 for

for 5 years from the date following the date on which late Bidaye died.

7. As this is a hard case inasmuch as late Bidaye died a premature death leaveing a large family behind, there is a strong case for grant of family pension to the widow after condoning the breaks in his service. The breaks in service are for the periods i.e. (1) from 28-6-25 to 20-9-25 i.e. 2 months and 24 days; and (2) from 4-3-26 to 5-4-26 i.e. 1 month and 2 days, in all 3 months and 26 days, and this may be condoned as required by note to rule 250 of the B.C.S. Rs. in order to enable the widow to get a family pension. These papers may, therefore, be submitted to Government through the F.D. for condonation of breaks in the service as was done in the case of Shri R.V. Velankar.

Late D.L.Bidaye has left a large family. His family consists of his wife nine children and a widowed mother. It is a pity that there is not earning member in the family and as such this is a fit case for condoning the small breaks in the service rendered by him.

Shri Bidaye was a very conscientious and careful cashier. Even though two of his children were down with typhoid and his wife was in hospital, he did not remain absent even for a day. Through he himself was not keeping well, he regularly attended office at the sacrifice of his own

health. It is understood that the he prepared the last pay bills for the month of July burning mid-night oil at home. His death was very tragic. He has left behind him large family and there is no earning member in the family. One of his sons is in College and another schoolinge. His case, therefore, deserves sympathy and special consideration. In the past, in the case of R.V. Velankar the break was of over a year and it was condoned by the F.D. F.D. may, therefore, be requested to condone the small break in service of three months and 26 days.

Sec.

The office note is self contained and gives all the facts. Shri Bidaye has left a large family; and unless the short breaks in. Service are condoned his widow and children will be left without any means of subsistance. In the case of the other two, who were drafted from P.W.D. originally the temporary and officiating service in that Department was taken into account for the ~~preparos~~ purposes of their pension. In the case of the one of them Shri Velankar ~~over~~ even longer breaks were Condoned. I would therefore, recommend that in this case, which is much more deserving on compassionate grounds, the same policy may be followed to the breaks condened so as to enable his family to earn a pension and get the gratuity.

Orders may kindly be passed early as the family have been left on a sad plight by the sudden death of their only earning member.

No. 14260 dt/3-9-12. F.D. Sd/30/8.

Finance Department. X .

Shri Bidaye has put in following service in the P.W.D. and the L.D.

Deptt.	From	To
P.W.D.	8/6/25	27/6/25
	28/6/25	20/9/25 (Break)
P.W.D.	21/9/25	3/3/26
	4/3/26	5/4/26 (Break)
P.W.D.	6/4/26	4/4/37
L.D.	5/4/37	2/8/52

According to the L.D. had the above service been continuous the total qualifying service would have been 25 years 3 months and 20 days and Shri Bidaye's family would be entitled to a family pension under Section III of G.R.F.D. No. 8315/33 dated 20/12/50. The L.D. has, therefore, requested this Deptt. to agree to the condonation of break in Shri B's service. That Deptt. has also quoted the precedents of Shri Ranade and Shri Velankar.

2. Shri Bidaye has exercised option (c) under G.R.F.D. No. 8315/33 dated 26/3/51. According to this G.R. the gratuity and family pension are to be calculated in accordance with the provisions of the Revised pension Rules. This will show that L.D's calculation of qualifying service is entirely wrong. Thus Shri B's qualifying service will be-

From	To	Total	Nature	Qualifying service.
6-4-26	4-4-37	10/11/30	Continuous Temporary.	5-6-0
5-4-37	2-8-52	15/3/29	Permanent.	15-3-29
				20-9-29.

Half the temporary service is taken here on qualifying service under para. 8 of G.R. F.D No. 8313/33 dated 20-12-50 (Slip Z) on the assemption, that no portion of this service can be treated as qualifying under para. 6(1) of that G.R.

Even if the previous temporary service of 6 months and 1 days were continuous there would be an additional qualifying service of 3 months and the total would be 21 yrs.0 month and 29days. The minium qualifying service for a family pension is 25 years. As Shri B's qualifying service is nearly 4 years less than the minimum required for a family pension the L.D's contention that by condoning the break Shri B's family will be entitled to a pension is not correct.

3. Under the old pension rules (i.e. those contained in the B.C.S.Rs. Manual) there was provision for condonation of break. Even power of condoning the break was delegated under the Note below B.C.S.R. 250 and as such breaks could be condoned without ref. to F.D. But under the Revised Pension Rules it has been specifically laid down (vide 1(iv) in G.C.F.D. 8315/33 dated 7/9/51) that breaks should not be condoned in order to secure the benefit of temporary service at half its value under the Revised pension Rules. So even if L.D's contention that by condoning the break the total qualifying service will be more than 25 yrs. were correct, the condonation would not be possible.

4. Incidentally the deficiency in the minimum qualifying service required for a family pension is nearly 4 years in this case. In the first place Revised Pension Rules do not provide for condonation of any deficiency in qualifying service and secondly the deficiency is too big. The case cannot therefore be considered from this angle also.

5. The L.D. has quoted as precedents two cases of Shri Ranade and Velankar, It, may,however be noted here that Shri Ranade and Velankar were the members of former Dev. Deptt. which was abolished in early thirties. Govt. servants who had put in lengthy service in the said Deptt. were given special treatment and their previous temporary service ~~service~~ was allowed to count towards pension. This was because the Dev. Deptt. was abblished and persons serving in the Deptt. for a very long time were put to a considerable loss. The analogy of the cases of Shri Ranade and Shri Velankar is not, therefore, applicable to this case. Shri Bidaye's all service was rendered in the P.W.D. He came over to the L.D. because there were no chances of his confirmation in the P.W.D. The precedents are not therefore of any use here.

6. In the circumstances explained above, hard as Shrimati Bidaye's lot is, it will not be possible to do any-thing in the matter. The family cannot unfortunately be held eligible for anything except the death-cum-retirement gratuity that will be admis ible under the rules. The L.D. may be advised accordingly.

Legal Department.

Submitted.

Please see F.D. U.O. note dated 9-9-1952.

The whole of late Bid ay's P.W.D. service of 10 Yrs. 11 Mths. 30 days has be n determined by F.D. as service of 5 years and 6 Mths. Under para 8 of G.R. F.D. No. 8315/44 dated 20-12-1950, whereas this Department has treated his officiating service of 8 Yrs. 14 Mths. 17 days as qualifying under para 6(1) of that G.R. These papers may be shown U.R. to the P.W.D. with a request to state whether late Bideyds Ag. or Offg. service in the P.W.D. will not be cover d by the provision in para 6(1) of G.R., F.D. referred to above.

U.R. to P.W.D. No. 14999/C, dated 13-9-1952.

SSM / 27/7/56.

D.O. No. 15006/C.

Legal Department,

Bombay Castle, 13th Sept., 1952.

My Dear Dave

Herewith I send the papers regarding the calculation of the period of service in the Public Works Department of Shri Bedaye and whether such service was in respect of a permanent post. Will you be so good as to return me the papers, with all proper information, on Tuesday and oblige?

Yours faithfully,

sd/ ——

Shri P.Y. Dave,
Assistant Secretary to Government,
Public Works Department,
Secretariat, Bombay.

JSM / 27/7/56.

Public Works Department
Secretariat,
Bombay No. 1, 17th Sept., 192

My Dear Bhamgara,

Your D.O. No. 15006/3, dated the 13th instant regarding late Shri D.L.Bidaye.

Going through the papers, I find that a number of files and pay-bills will have to be gone through to ascertain the services of Shri Bidaye and it would take some time before it can be properly done. Looking to the urgency of the case, I shall endeavour to return your papers by the end of the week.

Yours

(J.M. Dave),

Shri K.D. Bhamgara, LL.B.,
Assistant Secretary to Government,

Legal Department.

SSM / 27/7/56.

L.D. 21307/05829.
Public Works Department.

Sutmitted.

2. This case has been referred to this Department in order to ascertain whether the whole of the service rendered by late Shri Bidye in this Department can be counted towards pension. It has been verified form the office copies of the pay bills of this Department for the period for which Shri Bidye was in this Department that he had been shown some times on temporary establishment and some times on permanent establishment in leave vacancies, i.e. he was shown in vacancies where there was provision, viz., on permanent or temporary establishment. No doubt Shri Bidye was in continuous service from 6-4-26 to 4-4-37, but he was not against a clear vacancy of permanent establishment or against a temporary vacancy which was subsequently made permanent. Hence, ordinarily, according to Rules the whole of Shri Bidye's service in this Department will not count towards qualifying service unless his case is treated as a very special one in the circumstances explained in the L.D. notes at pp. 23-27 ante.

3. Going through these papers it appears that Shri Bidye died in such a condition as it warrants a very special treatment and sympathetic consideration. He left behind a large family consisting of 11 members. None of them is an earning hand. The Children are schooling. As the main stay of the family has gone away, the whole family is put in a precarious condition.

Shri

Shri Bidye being a Government servant there may not be any other source of income besides his salary. Looking to these circumstances and the present cost of living and taking into consideration his faithful service, this Deptt. feels that his case may be considered very sympathetically and treated as a very peculiar one and Shri Bidye's family may be made eligible for a family pension after counting such of the protion of the temporary service as it would require to make his qualifying service for 25 years.

4. If at all the above course cannot be adopted, this Deptt. feels that atleast an ex gratia family pension on the basis of qualifying service admissible under the Rules may be granted to the family of Shri Bidye.

5. The contention made by the F.D. in the concluding portion of para 5 of its note at pp. 29-31 *ante* is not correct, as the persons junior to Shri Bidye have been continued and confirmed in this Department.

6. The se papers may be returned to the L.D.

U.R. to the Legal Deptt . dt. 25-9-52.

SSM / 27/7/56.

Legal Department.

Submitted.

Please see F.D.U.R. dated 10-9-1952. The F.D. has turned down L.D.'s proposal for the grant of Family pension to the widow of late Shri D.L. Bidye on the grounds that the total service of 10 Yrs- 11 months and 30 days rendered by him in the P.W.D. is counted half under para 8 of G.R.F.D. No. 8315/33 dated 20-12-1950 and therefore there is a deficiency of nearly 4 years in the minimum qualifying service required for a family pension.

This Department has calculated the period of temporary service of 2 years 8 months and 3 days as purely temporary, and added half of it, i.e. 1 year 4 months and 1 day to the remining officiating or acting period of 7 years 10 months and 16 days, assuming that this period would be the period during which late Shri Bidye officiated or acted in the vacancies of permanent nature or against temporary vacancies which were subsequently made permanent. In order to get this period clarified the papers on return from the L.D. were referred to the P.W.D. which Deptt. states that no doubt Shri Bidaye was in continuous service from 6-4-1926 to 4-4-1947, he was not against a clear vacancy on permanent establishment or against a temporary vacancy which was subsequently made permanent and hence the whole of his service in the P.W.D. will not count towards qualifying service unless the case is treated as a special one in the circumstances explained in L.D. notes at pp. 23-27 ante. In para 3 of its notes, the P.W.D. has strongly recommended that Shri Bidaye's case be treated and considered very sympathetically so that his family may be made eligible for a family pension after counting such of the portion of the temporary

service as it would require his qualifying service for 25 years. The P.W.D. further states that if the above course is not feasible, then that Deptt. feels that an ex-gratia family pension on the basis of qualifying service admissible may be granted to the family of Shri Bidaye.

In view of para 5 of the P.W.D. Note the contention by the F.D. in the concluding protion of para 5 of its note at pp. 29-31 ante is incorrect.

As it will take some time before the question of family pension to be granted to the family of Shri Bidaye is settled, perhaps the question of the grant of the amount of gratuity which is admissible under the rules may now be taken up with the A.G. requesting him to arrange for the early payment of the amount of gratuity due to the family of Shri D.L.Bidaye and informing him that the question of family pension is under consideration of Government and as soon as it is decided he will be informed accordingly.

P.W.D. note does not help. It only states that-

(1) F.D. should ~~due~~ be requested to grant family pension after counting such of the temporary service as it would require to make qualifying service for 25 yrs., and

(2) If at all the above course cannot be adopted at least an ~~ex~~ ex-gratia family pension on the basis of qualifying service admissible under the rules may be granted to the family of late ~~late~~ Shri D.L. Bidaye.

Either course require sanction of F.D.

2. F.D. may be requested to that at least 9 years, 8 months and 1 day's pension period of the temporary officiating service service of Y. H. D. 16-1-30 to make

make qualifying service of 25 years in order that family of late Shri Bidaye may get pension in view of the peculiar circumstances of this case.

Action as regards A on page 38 may be ~~taken~~ taken up separately to settle that question ungently.

Late Shri Bidaye, was in temporary service in the P.W.D. from 6-4-1926 to 4-4-1937, which comes to a total service of 10 years 11 months and 30 days. For purposes of the qualifying service, half of this service of five years and 6 months has been taken into consideration. Under para 8 of G.R.F.D. dt. 20-12-1950. ~~As~~ Even the P.W.D. state that though Shri Bidaye was in ~~x~~ continuous service from 6-4-26 to 4-4-37, he was not shown against a clear vacancy on permanent establishment or against a temporary vacancy which was subsequently made permanent. Hence under the Rules the whole of that period of service would not count as qualifying service. The F.D. may, therefore, be approached with a request to allow the whole of the temporary service as qualifying service by relaxing the Rules.

J.R. to F.D. No. 16505/, dt. 8th Oct. 1952.

Finance Department.

Submitted with ref. to office note dt. 8.9.52 on pp. 29-31 ante.

2. It will be seen from para 2 of the P.W.D. note on p. 35 ante that P.D.'s calculation of the qualifying service of Shri Bidye is correct So Shri Bidaye had put in only 20 completed years of qualifying service while no family pension is admissible unless qualifying service exceeds 25 years. In the case of such a large deficiency in qualifying service it is not possible to do anything in the matter. Even if Shri Bidaye had continued in the P.W.D. his temporary service would not have counted at full value for pension. For the present under the Revised Pension Rules there is no provision for the condonation of any deficiency for purposes of pension and death-cum retirement gratuity. Even if such a pension had been there, it would not have provided for condonation of so large a deficiency. If family pension is to be given only for 20 years qualifying service there would be no point in prescribing the minimum limit of 25 years. However much, therefore, one may feel sympathies for Shri Bidaye's family nothing can be done to enable it to get family pension Cases where Govt. servants die prematurely are

are by no means new and as such the L.D. proposed will prove to be a very bad precedent. The L.D. may, therefore, be advised that Shri Bidaye's family cannot be held eligible for anything except the death cum retirement gtatuity which is admissible under the Rules.

Please speak.

Submitted.

2. As already indicated at 'A' of the foregoing office note. Shri Bidaye's family is entitled to death-cum-retirement gratuity under the Revised Pension Rules. The account of the gratuity will be about Rs. 2500 to 3000. As under the Revised Pension Rules death-cum-retirement gratuity is admissible in the case Shrimati Bidaye cannot also be granted any gratuity from the compassionate fund also. (Vide G.C.F.D. No. 1369/33 dt. 9-1-1951).

As at 'A' p. 40

U.R. to the L.D. dt. 13/11/52.

SSM / 28/7/53.

Submitted with reference to this Deptt. note dated 6-10-52.

The F.D. was requested to allow the whole of the temporary service by relaxing the Rules.

The F.D. states that Shri Bidaye had put in only 20 completed years of qualifying service while no family pension is admissible unless qualifying service exceeds 25 years. In the face of such large deficiency in qualifying service the F.D. states that nothing can be done in the matter. It further states that even if Shri Bidaye had continued in the P.W.D. his temporary service would not have been counted at full value for pension. Under the Revised Pension Rules there is no provision for the condonation of any deficiency for purposes of pension and death-cum-retirement gratuity. Even if such a provision had been there it would not have provided for condonation of so large a deficiency. The F.D. thus turns down our request for relaxing the Rules and allow the whole of the temporary service as qualifying service and adds that Shrimati Bidaye cannot also be granted any gratuity from the Compassinnate Fund also. It is now for consideration whether the L.D. should again press for the relaxation of the Rules.

If this question is again referred to the F.D. it might take

take considerable time, therefore, the question of the grant of the amount of gratuity which is admissible under Rule 3(3) of the Revised Pension Rules may now be taken up with the A.G., Bombay, requesting him to arrange for the payment of the gratuity due to the family of late Shri Bidaye. The amont of gratuity will be Rs. 3144/-

The F.D. has turned down this Deptt's request for relaxing the Rules on the ground that the L.D. proposal will prove to be a very bad precedent. If F.D. cherished such fears, it could have made an exception and stated in the order that it should not be cited as a precedent. Perhaps, it would serve no purpose now to approach F.D. again.

The A.G. may be requested to arrange for payment of the gratuity to Shri Bidaye's widow.

~~Sec.~~

~~(-Please-put-up-separate-proposals-for-gra~~

SSM / 28/7/56.

No. 20369/C.

Legal Department,
Bombay Castle, 5th December 1952.

To

The Accountant General,
Bombay.

Subject:- Grant of death-cum-retirement gratuit
to the widow of late Shri D.L. Bidaye
ex-cashier, Legal Department.

Sir,

I am to state that late Shri D.L. Bidaye, ex-cashier, Legal Department drawing the salary of Rs. 212-0-0 p.m. and Rs. 50/- p.m. (as cashier's duty pay) died on the 2nd August 1952. The qualifying service put in by him is only 20 years and as such his family is not eligible to a family pension which requires a qualifying service of 25 years. His family is, therefore, eleigible for nothing except death-cum-retirement gratuity admissible under the Revised Pension Rules. The gratuity admissible to his family comes to Rs. 3144/- (Rupees three thousand one hundred and forty four) only which is equal to twelve times the pay at the time of his death. Necessary order sanctioning the gratuity is enclosed herewith together with the application in Form F received from the widow. I am also to inform you that late Shri Bidaye had opted under rule 1(c) of the Revised Pension Rules.

2. I am to request you to be so good as to treat this case as very urgent.

Yours faithfully,

Secretary to Government.

BBM / 26/7/55.

Form of Pension of Gratuity

No. of 195 dated 5/12/1952

Under the authority vested in him the Secretary to the Government of Bombay, Legal Department, Secretariat, Bombay sanctions the grant of a death-cum-retirement. Gratuity of Rs. 3144-0-0 (Rupees three thousand one hundred and forty four) only to Shrimat i Sushila Dattatraya Didaye, widow of late Shri D.D. Didaye, ex-cashier, Legal Department, payable at Bombay.

2. The Gratuity is chargeable to Provincial Revenue.

3. Under article 922 of the Civil Service Regulations (5th Edition) this order is liable to revision by higher authority, and should the Gratuity now sanctioned be found in excess of that admissible under the Regulations, the excess must be refunded.

Secretary to the Government of
Bombay,
Legal Department.

SSM / 28/7/56.

No. 21927/S.
Legal Department,
Bombay Castle (Bombay No.1), 27th
December 1952.

To

The Accountant General,
Bombay.

Subject:- Grant of D.C.R. Gratuity to the widow of late Shri D.L.Bidaye, ~~ex-~~ Ex-chashier.

Sir,

With reference to your letter No. PR. II/6411, dated the 12th December 1952, on the above subject, I am directed to state that Forms I and II were furnished to you with the supplimentary pay bill for Rs. 688-5-0, dated the 26th June 1948 claiming the arrears of spy pay and dearness allowancee for four members, including late Shri Bidaye. However, fresh forms I and II with the service book of late Shri Bidaye are forwarded herewith.

I am further directed to forward herewith declaration electing option (c) in original and also specimen signature and thumb impression in duplicate of the applicant, Shrimati Sushilabai Dattatraya Bidaye, widow of late Shri Bidaye.

I am directed to request you to be so good as to treat this case as very urgent.

Yours faithfully,

for Secretary to Government,

Encl.

1. Gr. sanction order.
2. Application.
3. Signature & Thumb impression in duplicate.
4. Servicebooks and leave account.
5. Forms I and II 6. Declaration in original

65

No. 6015/C.
Legal Department,
Bombay Castle (Bombay No. 1), 30th
March 1952.

Subject:- Gratuity or Pension to the widow of late Shri D.L. Bidaye.

MEMORANDUM.

With reference to her application dated the ~~4th~~ 8th August 1952. on the above subject Shrimati Sushila Dattatraya Bidaye is informed that as the two sons viz. Gajanan and Laxman are major, they are also entitled to the amount of gratuity. She and the two sons will have therefore to execute an Indemnity Bond, a copy of which is forwarded herewith, to receive the amount of Gratuity payable to them.

She is further informed that she will have to furnish at least one surety who will also be a signatory to the Indemnity Bond. The Indemnity Bond is chargeable with a stamp duty of Rs. 1-8-0.

Assistant Secretary to Government,
Legal Department.

To

Shrimati Sushilabai,
Widow of late Shri D.L.Bidaye,
Golch House, Opposite Central Studio,
Tardeo, Bombay7.

SSM / 28/7/56.

Immediate.

No. 6665/C

Legal Department,
Bombay Castle (Bombay No. 1),
9th April 1952.

To

The Accountant General,
Bombay.

Subject:- Grant of Death-Cum-Retirement gratuity to the widow of Shri D.L. Bidaye, ex-cashier.

Sir,

With reference to the correspondence ending with your letters Nos. PRII/7383 and PRII/7849, dated the 23rd January and 14th February 1953, on the above subject, I am directed to forward herewith the Last Pay Certificate along with the History of Service in Bombay Civil Services Rules Form 15 and the specimen signatures of Shrimati Sushila duly attested.

I am directed also to forward herewith an indemnity bond executed by Shrimati Bidaye and her two major sons viz. Gajanan and Laxman and signed by surety Shri Joseph David.

The service book and other documents received from you together with the above documents are forwarded herewith.

Yours faithfully,

Assistant Secretary to Government.

SSM / 28/7/56.

Death Cum Retirement Gratuity.

Payment of - to Smt. Sushilabai Dattatraya Bidaye, widow of late Dattatraya Laxman Bidaye.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 11172/C.
Bombay Castle, 14th May 1953.

Unofficial Reference to the Finance Department No. 4173/C, dated the 3rd March 1953.

Unofficial Reference from the Finance Department.

RESOLUTION:- As Government is satisfied regarding the right and title of the claimant Smt. Sushilabai Dattatraya Bidaye, widow of late Dattatraya Laxman Bidaye to the payment of the amount of Rs. 3,144/- (Rupees three thousand one hundred and forty-four only) on account of Death Cum Retirement Gratuity payable by Government and as it considers that undue delay and hardship would be caused by insistence on the production of letters of administration, Government is pleased to direct that the said amont should be paid to her under rule 228(ii) of the B.C.S. Rules on production by her of an indemnity bond, with one surety, executed in the form prescribed in Fin. R.Form No. 3A.

By order and in the name of the Governor of Bombay,

(J.R.Dhumandhar),
Secretary to Government,
Legal Department.

To

The Accountant General, Bombay (through the Finance Department),
The Finance Department,
Smt. Sushilabai Dattatraya Bidaye.

No. 11350/C.
Legal Department,
Bombay Castle (Bombay No.1), 18th May 1953.

To

The Accountant General,
Bombay.

Subject:- Death Cum Retirement Gratuity.
Payment of - to Smt. Sushilabai Dattatraya Bidaye, widow of late Dattatraya Laxman Bidaye.

Sir,

With reference to your letter No. PR. II/Sect/316, dated the 1st April 1953, on the above subject, I am directed to invite your attention to Government Resolution, Legal Department No. 11172/C, dated the 14th May 1953 (copy enclosed for ready reference), under which the production of letters of administration by Smt. Sushilabai Dattatraya Bidaye has been dispensed with as Government has agreed to make the necessary payment to her on production by her of an indemnity bond.

2. The necessary declaration of non-receipt of Death Cum Retirement Gratuity in Form Genl. 33 Ae is forwarded herewith.

3. The gratuity papers received with your letter referred to above are returned herewith.

Yours faithfully,

Assistant Secretary to Govt.
Legal Department.

SSM / 28/7/56.

Bombay

I hereby declare that I have neither applied for nor received any pension or gratuity in respect of any portion of the service included in this application and in respect of which pension or gratuity or Death Cum Retirement Gratuity is claimed herein nor shall I submit an application hereafter without quoting a reference to this application and to the orders which may be passed thereon.

SSM / 28/7/56.

No. 17315/C
Legal Department,
Bombay Castle (Bombay No. 1), 19th August 1953.

To

The Accountant General,
Bombay.

Subject:- Death Cum Retirement Gratuity. Payment of - to Smt. Sushila-bai Dttatraya Bidaye, widow of late Dattatraya Laxman Bidaye.

Sir,

With reference to para 2 of your letter No. PA.I/20/1748, dated the 12th August 195., on the above subject, I am directed to state that the necessary Indemnity Bond, with one surety, executed in the Form prescribed in Fin. R. Form No. 3A has already been forwarded to you with this Department letter No. 6665/C, dated the 9th April 1953. It will be found among the gratuity papers returned to you with this Department letter No. 11350/C, dated the 18th May 1953. That being the position, the question of production of Indemnity Bond does not now survive.

2. I am further to request you to forward a copy of your No. PA.I-20/857, dated the 23rd June 1953, which has not been received in this Department.

Yours faithfully,

Assistant Secretary to Government,
Legal Department.

No. 17801/C

Legal Department,
Bombay Castle (Bombay No.1), 28th Aug., 1953.

To

Smt. Sushilabai Dattatraya Bidaye,
Kolah House, Opposite Central Studio,
77, Tardeo Road, Bombay.

Madam,

I am directed to inform you that the Accountant General, Bombay, has issued D.C.R. Gratuity Payment Order No. DCRG/3603, for Rs. 3144/- in your favour. I am accordingly to request you to approach the Accountant General's Office to receive the necessary payment.

Yours faithfully,

Assistant Secretary to Government,
Legal Department.

SSM / 28/7/56.

Submitted with reference to the Assistant Accounts Officer's letter dated the 16th September 1953.

2. The Supdt. of Stamps has held and the R.L.A. in his opinion No. 8893 dated 28th May 1952 has confirmed that an idemnity bond is an agreement to make good any loss which Govt. may suffer by reason of acting on the recommendation of the Executants and in the event of their failing to carry out the undertaking and as such as chargeable with a stamp duty of Rs. 1/8/- under Article 5(c) of the Schedule I to the Indian Stamp Act,. The Indemnity bond executed by Shrimati Bidaye and her two major sons has been therefore properly stamped.

3. As regards para 3 of the Assistant Accounts Officer's letter a written consent of the two major sons of Smt. Bidaye may be obtained for payment of the gratuity to their mother on their behalf.

9/d

I am afraid the R.L.A's opinion has no application to the present case. That opinion applies to an instrument which contains an agreement to indemnify and in default for payment of a named Sums. The present instrument is a Bond creating an obligation to pay a specific sum and it would be liable to duty of Rs. 15/- as an indemnity. I am extremely sorry I overlooked the question of Stamp-duty when the papers were put up last time.

BN
22/9.

Subd.

In view of the Solr.'s above note The letter at p. 129 put up for approval and signature may issue to Smt. Bidaye.

Office of the R.L A.

The view taken by the Superintendent of Stamps is correct. In a bond the penalty is the primary part of the instrument to which the agreement the performance of which avoids the penalty is subsidiary. A bond creates an obligation so that the breach of an obligation under a bond does not sound in damages. The instrument in the present case is an agreement to make good any loss which Government may suffer by reason of acting on the recommendation of the executants and in the event of their failing to carry out the undertaking. This instrument does not create and obligation to pay a specific sum of money so that such sum cannot be treated as the primary part of the instrument, and what is more, it provides for compensation in respect of loss caused or expenses incurred by reason of the default of the executants which means compensation in damages. It is for this reason that the instrument must be distinguished from a bond. It is an agreement. At the worst it can be treated as an agreement with a penal clause. Even then it will not be liable as a bond. The mere fact that it is attested would not make any difference

The R.L.A. would like to add that provision should be made in the agreement that all monies due thereunder shall be recoverable as arrears of land revenue as, otherwise, the only remedy for recovery would be protracted litigation.

Sd/- P.M.Lad,
Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 8893 dated the 28th May 1952.

SSM / 29 30/7/56.

Legal Department.
R.I. No. 4916 dated the 11-3-1952.

The view taken by the Supdt. of Stamp is correct.

A bond is a contract by which a person binds himself to pay money either in the present or at some future time. A conditional bond is usually an instrument in two parts (1) the obligation and (2) the condition. In the first the obligor binds himself to pay a sum of money. In the second terms are set forth with the condition that on their performance the bond is void. The condition is thus in the nature of defeasance. It has, however, to be distinguished from an Agreement with a penal clause. In a bond the penalty is the primary part of the instrument to which the agreement the performance of which avoids the penalty is subsidiary while an Agreement with a penal clause is just the reverse. In an agreement with penal clause the agreement is the primary part to which the penalty or default clause is subsidiary. Therefore in a bond the duty is levied on the penalty while in an agreement with the ~~penalty~~ penalty clause the duty is on the agreement for the penal clause is a contingency which may never arise. A bond creates an obligation while an agreement with a penalty clause does not, So that the breach of an obligation under a bond does "sound in damages" whereas the breach of an agreement must be compensated in damages. (see Gisborne and Co. vs. Subal Bavri, 3 Cal. 284; Collector of Rangoon Vs. Maung Aung Soe. 33 I.C. 920; Sunderlal Vs. Thakur Ghandharp sing (1937) is 12 luck. 131).

In the present case the instrument under consideration is an indemnity given by the

Colah House,
77, Tardeo Road,
Bombay. 19th/20th October 1953.

To

The Assistant Secretary to the
Government of Bombay,
Legal Department, Secretariat,
Bombay.

Sir,

With reference to your letter No. 19741/C dated the 29th September 1953, I am sending herewith a fresh Indemnity Bond made on stamp paper of Rs. 15/- as required by your letter under reference.

Yours faithfully,

(Smt. Sushilabai D. Bidaye)

SSM / 30/7/56.

URGENT.

No. 19741/C
Legal Department,
Bombay Castle (Bombay No. 1), 29th
Sept, 1953.

To

Smt. Sughilabai Dattatraya Bidaye,
W/O late Dattatraya Laxman Bidaye;
Kolah House, Opposite Central Stuelo,
77 Tardeo Road, Bombay.

Subject:- Death Cum Retirement Gratuity.
Payment of - to Smt. Sushilabai
Dattatraya Bidaye, W/O late
Dattatraya Laxman Bidaye.

Madam,

With reference to the correspondence, on the above subject, resting with this Department letter No. 17801/C, dated the 28th August 1953, I am directed to state that the Indemnity Bond executed by you and your two major sons Gajanan and Laxman is chargeable with a stamp duty of Rs. 15/-. I am accordingly to request you to produce in place of the one already produced by your, a fresh Indemnity Bond duly executed by you and your two major sons on a stamp paper worth Rs. 15/-.

2. I am further directed to request you to forward along with the fresh Indemnity Bond, the written consent of your two major sons, Gajanan and Laxman, for the payment of the gratuity amount to you on their behalf.

Yours faithfully,

Assistant Secretary to Government,
Legal Department.

SSM / 30/7/56.

MOST URGENT. No. 21490/C,
Legal Department.,
Bombay Castle (Bombay No.1), 23rd
October 1953.

To

The Accountant General,
Bombay.

Subject:- Death Cum Retirement Gratuity.
Payment of - to Smt. Sushilabai
Dattatreya Bidaye, W/O late
Dattatreya Laxman Bidaye.

Sir,

As requested in your letter No. PA-I-18/2155, dated the 16th September 1953, on the above subject, I am directed to forward herewith a fresh indemnity bond executed on a stamp paper worth Rs. 15/- by Smt. Sushilabai Dattatreya Bidaye and her two major sons, viz. Gajanan and Laxman and signed by surety Shri Joseph David.

2. The written consent of the two major sons Gajanan and Laxman Dattatreya Bidaye for the payment of the gratuity in question to their mother on their behalf is also forwarded along with the indemnity bond.

3. It is now requested that arrangements may kindly be made to make the necessary payment to Smt. Bidaye . immediately.

Yours faithfully,

Assistant Secretary to Government
Legal Department.

SSM / 30/7/56.

Colah House,
77, Tardeo Road,
Bombay-7.
19th October 1953.

We, the undersigned, Gajanan Dattatraya Bidaye and Laxman Dattatraya Bidaye, do hereby consent for the payment of the gratuity amount to our mother Sushilabai Dattatraya Bidaye on our behalf.

1. Sd. Gajanan Dattatraya Bidaye
"Colah House", 77 Tardeo Road, Bombay 7.
2. Sd. Laxman Dattataya Bidaye
"Colah House", 77 Tardeo Road, Bombay 7.

SSM /30/7/56.